

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

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IN RE: DEALER MANAGEMENT SYSTEMS  
ANTITRUST LITIGATION

This Document Relates to All Cases

MDL No. 2817  
Case No. 18 C 864

Hon. Robert M. Dow, Jr.  
Magistrate Judge Jeffery T. Gilbert

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**DECLARATION OF MICHAEL N. NEMELKA IN SUPPORT OF  
MDL PLAINTIFFS' OMNIBUS MOTION TO COMPEL**

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I, Michael N. Nemelka, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am a partner with the law firm of Kellogg, Hansen, Todd, Figel & Frederick, P.L.L.C. in Washington, D.C., which represents Plaintiff Authenticom, Inc. ("Authenticom"), Vendor Class Plaintiff Loop, LLC, d/b/a AutoLoop ("AutoLoop"), Plaintiffs Cox Automotive, Inc., Autotrader.com, Inc., Dealer Dot Com, Inc., Dealertrack, Inc., HomeNet, Inc., Kelley Blue Book Co., Inc., vAuto, Inc., VinSolutions, Inc., and Xtime, Inc. ("Cox Automotive"), and Plaintiff Motor Vehicle Software Corporation ("MVSC") (collectively, "Plaintiffs") in the above captioned case. I respectfully submit this declaration in support of MDL Plaintiffs' Omnibus Motion to Compel ("Motions to Compel").

2. The following facts are based on my personal knowledge or on information provided to me. If called upon as a witness, I could and would testify competently to them.

3. I have been and continue to be involved in the communications and meet and confers, pursuant to Local Rule 37.2, with Defendants CDK Global, Inc. ("CDK") and The Reynolds and Reynolds Company ("Reynolds") (collectively, "Defendants") regarding discovery in the above captioned case.

4. Consistent with their duties under Local Rule 37.2, the parties have met and conferred extensively over the past nine months in an effort to resolve their discovery disputes.

In the past two weeks, the parties have exchanged correspondence and held teleconferences nearly every day in an effort to resolve their disputes. And the parties have in fact resolved many of their disputes.

5. On behalf of Plaintiffs, the participants on the relevant telephonic meet and confers have been primarily Mike Nemelka, Daniel Dorris, Joshua Hafenbrack, Benjamin Rudofsky, and Daniel Guarnera. On behalf of CDK, the participants on the relevant telephonic meet and confers have been primarily Britt Miller and Matthew Provance. On behalf of Reynolds, the participants on the relevant telephonic meet and confers have been primarily Brian Ross and Leo Caseria.

6. On the telephonic meet and confers, the specific issues raised in the Motions to Compel have been discussed at length. Likewise, the correspondence exchanged by the parties have addressed the specific issues raised in the Motions to Compel.

7. Below is a table with the relevant correspondence that address issues raised in the motions to compel. Many of those letters memorialize and bear record of the meet and confers between the parties. I will not burden the Court by attaching every correspondence. To the extent a letter is cited in the Motions to Compel, I attach it below.

8. Below I also list the relevant discovery – primarily Requests for Production, but also Interrogatories – that Plaintiffs have served on Defendants and which are at issue in the Motions to Compel.

9. Below is also listed relevant evidentiary materials cited in the Motions to Compel.

10. Attached as Exhibit A is a true and correct copy of the Memorandum Opinion and Order (May 14, 2018), Dkt. 176.

11. Attached as Exhibit B is a true and correct copy of the Opinion & Order, *Authenticom, Inc., v. CDK Global, LLC* (July 14, 2017), Dkt. 172.

12. Attached as Exhibit C is a true and correct copy of the Memorandum Opinion, *Motor Vehicle Software Corp. v. CDK Global, Inc.* (C.D. Cal. Oct. 2, 2017), Dkt. 73.

Discovery Requests:

13. Attached as Exhibit D is a true and correct copy of Authenticom's First Set of Requests for the Production of Documents to Defendant CDK, dated October 2, 2017.

14. Attached as Exhibit E is a true and correct copy of Authenticom's First Set of Requests for the Production of Documents to Defendant Reynolds, dated October 2, 2017.

15. Attached as Exhibit F is a true and correct copy of Dealership Class Amended Requests for the Production of Documents to CDK, dated June 13, 2018.

16. Attached as Exhibit G is a true and correct copy of Dealership Class Amended Requests for the Production of Documents to Reynolds, dated June 13, 2018.

17. Attached as Exhibit H is a true and correct copy of Individual Plaintiffs Amended Requests for the Production of Documents to CDK, dated June 13, 2018.

18. Attached as Exhibit I is a true and correct copy of Individual Plaintiffs Amended Requests for the Production of Documents to Reynolds, dated June 13, 2018.

19. Attached as Exhibit J is a true and correct copy of Authenticom's Second Set of Requests for the Production of Documents to CDK, dated March 23, 2018.

20. Attached as Exhibit K is a true and correct copy of Authenticom's First Set of Interrogatories to CDK, dated March 23, 2018.

21. Attached as Exhibit L is a true and correct copy of Authenticom's First Set of Interrogatories to Reynolds, dated March 23, 2018.

22. Attached as Exhibit M is a true and correct copy of CDK's Responses to Authenticom's First Set of Interrogatories, dated May 7, 2018.

23. Attached as Exhibit N is a true and correct copy of Reynolds' Response to Authenticom's First Set of Interrogatories, dated May 7, 2018.

24. Attached as Exhibit O is a true and correct copy of Reynold's Responses and Objections to Dealership Class Requests for the Production of Documents, dated June 22, 2018.

Evidentiary Materials:

25. Attached as Exhibit P is a true and correct copy of the document Bates-stamped CDK-1796970-72.

26. Attached as Exhibit Q is a true and correct copy of the document Bates-stamped CDK-0019201.

27. Attached as Exhibit R is a true and correct copy of the document Bates-stamped CDK-0864806.

Correspondence Cited in the Motion to Compel:

28. Attached as Exhibit S is a true and correct copy of a Letter from L. Caseria to M. Nemelka (July 30, 2018).

29. Attached as Exhibit T is a true and correct copy of a Letter from M. Provance to M. Nemelka (July 30, 2018).

30. Attached as Exhibit U is a true and correct copy of a Letter from M. Provance to M. Nemelka (August 2, 2018).

31. Attached as Exhibit V is a true and correct copy of a Letter from B. Ross to M. Nemelka (December 1, 2017).

32. Attached as Exhibit W is a true and correct copy of a Letter from B. Ross to M. Nemelka (August 1, 2018).

33. Attached as Exhibit X is a true and correct copy of an Email from M. Provance to M. Nemelka (August 5, 2018, 3:51 PM).

34. Attached as Exhibit Y is a true and correct copy of a Letter from B. Miller to M. Nemelka (November 15, 2017).

35. Attached as Exhibit Z is a true and correct copy of a Letter from M. Nemelka to Defendants (July 30, 2018).

36. Attached as Exhibit AA is a true and correct copy of a Letter from M. Nemelka to Defendants (Aug. 3, 2018).

37. Attached as Exhibit BB is a true and correct copy of a Letter from M. Nemelka to CDK (July 30, 2018).

Other Relevant Correspondence:

<b>Date</b>	<b>Description</b>
08/06/2018	Email from M. Nemelka to B. Ross regarding Search Terms and Custodians
08/05/2018	Email from M. Provance to M. Nemelka regarding Plaintiffs Offer regarding Invoices
08/05/2018	Letter from A. Marovitz to D. Dorris regarding Limitations on RFPs
08/04/2018	Email from M. Provance to M. Nemelka regarding CDK Outstanding Discovery Issues
08/03/2018	Letter from B. Miller to M. Nemelka regarding Custodians
08/03/2018	Letter from M. Nemelka to B. Ross, M. Provance regarding RFPs and Interrogatories
08/02/2018	Letter from D. Dorris to A. Marovitz, M. Provance regarding Cox and AutoLoop Discovery
08/02/2018	Letter from M. Provance to M. Nemelka regarding RFPs and Interrogatories
08/02/2018	Letter from A. Marovitz to D. Dorris regarding Issues Discussed on 7-31-2018 Meet and Confer
08/02/2018	Letter from M. Nemelka to L. Caseria regarding Response to 7-28-2018 Letter
08/01/2018	Letter from B. Ross to M. Nemelka regarding Response to 7-30-2018 Letter regarding Discovery Responses
07/31/2018	Email from M. Nemelka to B. Miller et al regarding CDK Review of Custodians and Search Terms
07/31/2018	Letter from M. Provance to M. Nemelka regarding Outstanding Discovery Issues
07/31/2018	Letter from B. Miller to M. Nemelka regarding CDK Review of Custodians and Search Terms, with hit reports
07/30/2018	Letter from M. Nemelka to B. Ross, B. Miller regarding Outstanding Discovery Issues
07/30/2018	Letter from M. Provance to M. Nemelka regarding Discovery Issues
07/30/2018	Letter from L. Caseria to M. Nemelka regarding Discovery Issues

Date	Description
07/27/2018	Letter from M. Nemelka to L. Caseria regarding Confirmation of Discovery Issues Discussed during Meet and Confer
07/17/2018	Letter from M. Nemelka to B. Ross, B. Miller regarding Defendants RFP Responses
07/06/2018	Email from M. Nemelka to M. Provance et al regarding CDK Document Custodians
06/27/2018	Letter from P. Wedgworth to B. Miller regarding CDK Custodians
06/14/2018	Letter to M. Nemelka, P. Wedgworth regarding CDK RFP, Authenticom Rogs
06/14/2018	Letter from M. Nemelka, E McKenna to Defendants regarding Custodians
06/12/2018	Letter from M. Nemelka to B. Ross, B. Miller Re Custodians
06/12/2018	Letter from M. Provance to M. Nemelka, P. Wedgworth regarding Custodians
06/11/2018	Letter from B. Ross to P. Wedgworth, D. Ho regarding Reynolds Offer to Add Custodians
05/31/2018	Letter from M. Nemelka to B. Miller regarding RFP Issues in Jan 29 Letter.
05/31/2018	Letter from M. Nemelka to B. Miller et. al. regarding Meet and Confer & Authenticom's 1 <sup>st</sup> Set of Interrogatories.
05/29/2018	Letter from B. Miller to M. Nemelka, P. Wedgworth regarding Search Terms & Custodians
05/25/2018	Letter from M. Nemelka to A. Gulley, B. Miller regarding Custodians & Search Terms
05/25/2018	Letter from M. Nemelka to B. Ross, L. Caseria regarding Discovery Issues
05/24/2018	Letter to M. Nemelka, P. Wedgworth regarding Summary of Meet and Confer
05/17/2018	Email from M. Nemelka to A. Gulley, B. Miller regarding Defendants' RFP Responses
05/16/2018	Letter from B. Ross to M. Nemelka, D. Ho regarding Discovery Issues
05/16/2018	Letter from B. Miller to M. Nemelka regarding Discovery Issues
05/11/2018	Letter from M. Nemelka to B. Ross, B. Miller regarding Non-Custodial & Custodial Docs
3/30/2018	Letter from M. Nemelka to B. Miller, B. Ross regarding Duplication and Discovery
03/14/2018	Letter from M. Nemelka to B. Miller, B. Ross regarding Custodial, Non-Custodial Docs

Date	Description
01/29/2018	Letter from B. Miller to M. Nemelka regarding Discovery Issues
01/22/2018	Email from M. Nemelka to B. Ross regarding Reynolds Production, Meet & Confer
01/22/2018	Letter from B. Miller to M. Nemelka regarding Discovery Issues
01/21/2018	Letter from B. Ross to M. Nemelka regarding Discovery Issues
12/15/2017	Letter from B. Miller to M. Nemelka regarding Outstanding RFP Issues
12/15/2017	Letter from B. Ross to M. Nemelka regarding Open Discovery Issues
12/15/2017	Email from M. Nemelka to B. Ross, B. Miller regarding Deposition Notices and Discovery Issues
12/15/2017	Letter from B. Ross to M. Nemelka regarding Deposition Notices and Discovery Issues
12/8/2017	Letter from M. Nemelka to B. Miller, B. Ross regarding Custodians and Search Terms
12/8/2017	Letter from B. Ross to M. Nemelka regarding Discovery Issues
12/8/2017	Letter from B. Miller to M. Nemelka regarding Discovery Issues
12/7/2017	Letter from M. Nemelka to B. Ross and B. Miller regarding Discovery Issues
12/1/2017	Letter from B. Ross to M. Nemelka regarding Discovery Issues
12/1/2017	Letter from B. Miller to M. Nemelka regarding Discovery Issues
11/24/2017	Letter from M. Nemelka to B. Miller et al regarding Discovery Issues
11/16/2017	Letter from B. Ross to M. Nemelka regarding Follow-Up on Reynolds Meet-and-Confer Issues
11/15/2017	Letter from B. Miller to M. Nemelka regarding Discovery Issues
11/13/2017	Letter from M. Nemelka to B. Miller, A. Gulley et al regarding Discovery Deficiencies

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Dated: August 6, 2018

/s/ Michael N. Nemelka  
Michael N. Nemelka